

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE BANKS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2013

No. 312482

Wayne Circuit Court

LC No. 12-003965-FH

Before: JANSEN, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Defendant Maurice Banks appeals of right his jury trial convictions of possession with intent to deliver ecstasy, MCL 333.7401(2)(b)(i), and possession with intent to deliver Xanax, MCL 333.7401(2)(c). The trial court sentenced him as second habitual offender, MCL 769.10, to serve 80 months to 30 years in prison for the possession with intent to deliver ecstasy conviction and to serve one to six years in prison for the possession with intent to deliver Xanax conviction. Because we conclude there were no errors warranting relief, we affirm.

Banks argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that he was the person who possessed the drugs at issue with the requisite intent; specifically, he contends that there was no evidence to establish his identity as the owner of the drugs or to establish his presence at the location where the drugs were found. This Court reviews a challenge to the sufficiency of the evidence by reviewing “the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

In order to prove the charges, the prosecutor had to present evidence that Banks possessed the drugs at issue—ecstasy and Xanax—and did so with the intent to deliver them; that is, the prosecutor had to present evidence sufficient to prove Banks’ identity as the person who possessed the drugs and that he did so with the requisite intent. See *People v Brown*, 279 Mich App 116, 136; 755 NW2d 664 (2008) (stating that possession with the intent to deliver has two elements: possession and intent); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008) (noting that identity is an element of every offense).

Possession can be actual or constructive. *Brown*, 279 Mich App at 136. “Constructive possession of an illegal substance signifies knowledge of its presence, knowledge of its character, and the right to control it.” *Id.* A prosecutor may prove constructive possession through circumstantial evidence and the reasonable inferences that arise from the circumstantial evidence; and, “evidence that a defendant had the exclusive control or dominion over property on which contraband narcotics are found is sufficient to establish that the defendant constructively possessed the narcotics.” *Id.* at 136-137. In addition, the prosecutor does not have to prove a defendant’s intent to deliver through an actual delivery because the intent can be inferred “from the quantity of drugs in a defendant’s possession,” or by other circumstances surrounding the incident at issue. *People v McGhee*, 268 Mich App 600, 611-612; 709 NW2d 595 (2005).

Here, the prosecutor presented evidence that Banks resided at and controlled the real property where the drugs were found and had made sales from that location. Detroit Police Officer Stephen Geelhood testified that he saw Banks at the property on May 9, 2010. Specifically, he stated that he saw Banks make what he believed to be three drug sales from the house. Geelhood searched the tax records and confirmed that Banks owned the house. During a search of the home on the following day, Geelhood confiscated 770 pills, which were packaged in various plastic bags, a pill bottle in Banks’ name, Banks’ driver’s license, Banks’ chauffeur’s license, and a bank slip with Banks’ name on it along with the property’s address. This testimony and evidence was sufficient to establish that Banks had exclusive control over the house and operated from it; further, the same evidence permitted an inference that Banks constructively possessed the drugs confiscated from his home. Finally, a reasonable jury could infer from the packaging and quantity of the drugs that Banks intended to deliver them. Consequently, there was sufficient evidence to establish Banks’ identity as the person who possessed the drugs and to establish his intent to deliver them. *Brown*, 279 Mich App at 136; *Yost*, 278 Mich App at 356.

On appeal, Banks essentially concedes that Geelhood identified him as the person who sold drugs from the house, but nevertheless argues that this was insufficient to support his convictions because Geelhood’s testimony was uncorroborated and incredible. However, whether Geelhood was credible was a matter for the jury—not this Court—and the jury resolved any doubts about Geelhood’s testimony in the prosecution’s favor. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). There was sufficient evidence to support Banks’ convictions.

Banks also argues that the prosecution failed to overcome his alibi defense; specifically, he maintains that the prosecution failed to present any evidence to rebut his evidence that he was in Ohio on the days at issue. Once a defendant presents sufficient evidence to support an alibi defense, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Thompson*, 117 Mich App 522, 529; 324 NW2d 22 (1982). As previously noted, Geelhood identified Banks as the person who sold drugs from the home on the day before the search. The police officers also seized Banks’ driver’s license and other identifying materials from the home on the next day. The evidence that Banks was at the property on the day before the search of the home and that his identification was found in the home during the search was sufficient to rebut Banks’ alibi evidence. Banks also cites a jury instruction for the proposition that the prosecution had to prove he was actually present in order to establish that he possessed the drugs with the

intent to deliver. However, if the prosecution can establish constructive possession, as here, then it is not necessary to show actual possession. *Brown*, 279 Mich App at 136-137.

There were no errors warranting relief.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Kelly